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AO 106 (Rev. 07/87) Affidavit for Search Warrant

UNITED STATES DISTRICT COURT

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DISTRICT OF CALIFORNIA

'08 MJ 0582

In the Matter of the Search of

(Name, address, or brief description of person, property or premises to be searched) BY:

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

The Premises of Tony Harrell
1301 Medical Center Drive #323
Chula Vista, CA 91911

CASE NUMBER:

I, Michael Cote, being duty sworn depose and say: I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives and have reason to believe

that on the property or premises known as (name, description and/or location)

SEE ATTACHMENT A

In the Southern District of California there is now concealed a certain person or property, namely (describe the person or property to be seized

SEE ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

property which constitutes evidence of the commission of a criminal offense concerning a violation of Title 18 United States Code, Section 922 (A)(6)

The facts to support a finding of Probable Cause are as follows:

SEE ATTACHMENT C

Continued on the attached sheets and made a part hereof.

Signature of Affiant

Sworn to before me, and subscribed in my presence

2-27-08 at San Diego CA

Date | City and State

Nita Stormes
U.S. Magistrate Judge

Signature of Judicial Officer

NITA L. STORMES
U.S. MAGISTRATE JUDGE

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ATTACHMENT A
DESCRIPTION OF PREMISE TO BE SEARCHED

1301 Medical Center Drive #323 is located in Chula Vista, California, San Diego County. The address is the Sevilla Apartment Complex, located along the east side of the street, and it is made up of seven buildings. The complex is surrounded by a metal fence. As you enter the complex, the numbers "1301" are affixed in black lettering on a single story white stucco building located in the middle of the property. The building is used as a management office and clubhouse. Apartment #323 is located in Building 3, which is a three story white stucco building and is located along the southeast of the property. The apartment is located on the second floor of the southern stairway. The front door is facing south and is brown in color with the number "323" posted in white on it.

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ATTACHMENT B

ITEMS TO BE SEIZED

Items to be seized include but are not limited to:

a. Firearms, firearms parts, firearm boxes and containers, ammunition, operational instructions, manuals and parts lists;

b. Documents and items that are related to the acquisition and disposition of firearms and firearms parts, including driver's licenses, telephone records, telephone bills, address and telephone books, canceled checks, receipts, bank records, journals, invoices, ledger books, and other financial documentation;

c. Documents and items that tend to show the identity of persons controlling, occupying, possessing, residing in, owning the premises, including keys, rental agreements and records, leases, property acquisition records, utility and telephone bills and receipts, photographs, answering machine tape recordings, telephone beepers or paging devices, rolodexes, telephone answering pads, storage records, vehicle records, canceled mail envelopes, correspondence, financial documents such as tax returns, bank records, safety deposit box records, canceled checks, and other records of income and expenditures, credit card and bank records, and personal identification and travel documents.

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ATTACHMENT C

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

I, Michael G. Cote, being duly sworn, hereby depose, and say:

I have been employed as a Special Agent (S/A) with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) since August 2001. Prior to my employment with ATF, I was a police officer with the city of San Diego for approximately 8 years. I have attended the Federal Law Enforcement Training Center in Glynco, Georgia, where I graduated from the Criminal Investigators' Training Program (CITP). Upon completing CITP, I attended the ATF National Academy where I received instruction in the recognition, identification and prosecution of federal firearms law violations. I graduated the San Diego Regional Police Academy in June 1994. I received a Bachelor of Science degree from the Pennsylvania State University in 1992.

During my tenure with ATF, I have been involved in numerous investigations involving state and federal firearms, arson, and explosive violations, as well as federal violations of contraband cigarette laws.

This affidavit is made in support of a warrant to search an apartment at the "Sevilla" apartments, located 1301 Medical Center Drive #323, Chula Vista, California, for items constituting evidence of violation of Title 18 United States Code 922 (A)(6), i.e, knowingly providing false information to a Federal Firearm Licensee ("FFL") to acquire firearms.

PREMISES TO BE SEARCHED

The premises sought to be searched is apartment #323, Sevilla Apartments, located at 1301 Medical Center Drive, Chula Vista, California, as specifically and more fully set forth in **Attachment A.**

ITEMS TO BE SEIZED

See Attachment B

PROBABLE CAUSE

During the course of my duties, I have learned the following information based upon my discussions with the named witnesses or by having read the reports of or talked with other law enforcement officers who have spoken directly with the named witnesses. All references to date refer to this calendar year unless otherwise stated.

On 8 February 2008, Myself and ATF S/A Joseph Mokos met with Chula Vista Police Detective ("CVPD") Christine Penwell and Naval Criminal Investigative Service ("NCIS") S/A Amy Murphy. During the meeting, I learned that Tony HARRELL, a former E3 in the United States Navy who was discharged 03 December 2007, is a suspect in an assault with a deadly weapon, a firearm, that occurred on 26 January 2008 in the city of Chula Vista. After the shooting, HARRELL fled the scene with the firearm, a .380 caliber semi-automatic handgun. Detective Penwell discovered that some of the people involved in the shooting were active and former military service members. Detective Penwell requested assistance from NCIS S/A Murphy.

On 6 February 2008, NCIS S/A Murphy and NCIS S/A Ryan Colwell went to HARRELL'S apartment, 1301 Medical Center Drive #323, in an effort to interview him regarding the shooting. When they arrived, they spoke to Daryl PHILIPS, a roommate. PHILIPS advised that HARRELL was not present, but confirmed that HARRELL and his girlfriend, Brittany LEWIS, had moved in with him. While the NCIS agents spoke to PHILIPS, LEWIS and HARRELL walked into the apartment. The door was unlocked by HARRELL using a key. S/A Murphy and S/A Colwell explained to HARRELL why NCIS was at the apartment. LEWIS and HARRELL confirmed that they reside in the apartment and moved into the current apartment on 01 February 2008.

During the interview, HARRELL, who was advised of his rights by S/A Murphy, confirmed that he had been involved in the shooting on the 26 January 2008 in the area of Oaklawn Ave, Chula Vista, CA. In fact, HARRELL advised that he had fired the first shot. S/A Murphy requested and received HARRELL'S written permission to search the apartment in an effort to locate the .380 caliber handgun. After HARRELL signed the consent form, using the current address of 1301 Medical Center Drive #323, Chula Vista, CA, he explained that the firearm, a .380 Lorcin semi-automatic handgun, was in his bedroom. S/A Murphy talked to HARRELL further regarding the clothing worn on the night of the shooting. HARRELL confirmed that he had the blue jacket and that it was hanging in his closet. S/A Murphy asked HARRELL if she could have the firearm and the jacket. HARRELL agreed to give the firearm to the NCIS agents, but refused to give them the jacket. HARRELL led S/A Colwell to a rear bedroom and HARRELL turned the Lorcin, model L380, serial # 070422, semi automatic .380 handgun over to S/A Colwell.

S/A Murphy asked HARRELL if he had any other firearms. HARRELL advised that he had a .40 caliber handgun. S/A Murphy asked HARRELL if she could have that weapon, as well. HARRELL refused to give NCIS the weapon and advised that he needs that weapon for protection.

S/A Murphy and S/A Colwell took custody of the Lorcin firearm and later turned the weapon over to CVPD Detective Penwell.

S/A Murphy performed a records check on the firearm. The check revealed that HARRELL had purchased the Lorcin on 10 March 2006 from Alexandria Pawn, Alexandria, Louisiana. The check, also, revealed that HARRELL purchased an additional firearm, a .40 caliber Hi-Point semi-automatic firearm, serial number X728826, from the same pawn shop using a Louisiana address. He purchased it on 03 January 2008 and picked the firearm up on 02 February 2008. When HARRELL purchased the firearm, HARRELL indicated that he was a resident of Louisiana. Upon purchasing the firearm, HARRELL signed the ATF Firearm Transaction Form (4473) indicating that he understood that making false statements on the ATF 4473 is punishable as a felony. When he took custody of the firearm on 02 February 2008 in Louisiana, HARRELL signed the ATF 4473, stating that all the previous information provided on 03 January 2008 was still true and correct.

S/A Cote conducted a computer check on Alexandria Pawn. The check revealed that Alexandria Pawn has a current federal firearms license.

On 13 February 2008 S/A Cote drove the parking lot of 1301 Medical Center Drive, Chula Vista, CA. S/A Cote located HARRELL'S Chevrolet Impala, CA #4WDL447, parked in a parking stall next to building 3. A computer check on the vehicle revealed that it is currently registered in the State of California to HARRELL at a Chula Vista address.

S/A Cote discovered that on 20 December 2007, HARRELL received a traffic violation within the City of San Diego. HARRELL provided a Chula Vista address to the officer.

In October 2007, HARRELL tested positive for narcotics during a military drug test. HARRELL was discharged from the United States Navy with an "Other than Honorable Conditions" on 03 December 2007 for Substance Abuse.

CONCLUSION

Based on my training and experience, I believe that once HARRELL was discharged from the military, he maintained his residency in Chula Vista, CA. After separating from the military, HARRELL received a traffic citation and provided the police officer with a Chula Vista, CA address, his vehicle has California registration, and he moved from an apartment in Chula Vista into a new apartment in Chula Vista, CA on 01 February 2008. When HARRELL signed the ATF 4473 in January and, again in February, stating that he was a resident of Louisiana, HARRELL knowingly provided false information to take custody of the Hi Point, .40 caliber weapon.

I have participated in or have knowledge of the execution of many search warrants for firearms violations.

Based on this experience, I know that people who possess firearms usually possess other items related to firearms, such as: gun cases, ammunition, ammunition magazines, holster, spare parts, cleaning equipment, photographs of firearms and receipts for the purchase of these items.

Based on the facts and opinions set forth above, I believe that violations of Title 18, United States Code, Section 922 (A)(6) have occurred and that evidence of these violations, as described in **Attachment B**, will be located at the premises to be searched, identified in **Attachment A**.

MICHAEL G. COTE
Special Agent-ATF

Subscribed and sworn to before me this 27th day of February 2008.

Nita Stormes
U.S. Magistrate Judge